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Attorneys for Plaintiff

UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

PORTLAND DIVISION

NORTHWEST NATURAL GOODS, LLC;

Plaintiff,

v.

CANOPY GROWTH USA, LLC; and
MARTHA STEWART LIVING
OMNIMEDIA, INC.,

Defendants.

Case No. _____

COMPLAINT

Copyright infringement, violation of
Lanham Act, common law trade dress
infringement, unfair and deceptive trade
practices (15 U.S.C. § 1121, 28 U.S.C. §§
1331, 1338, 1367)

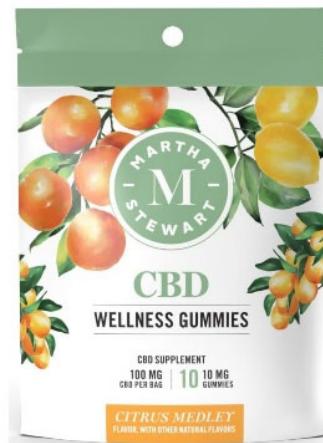
DEMAND FOR JURY TRIAL

INTRODUCTION

1. This case is about intentional copyright and trade dress infringement.

2. Plaintiff Northwest Natural Goods, LLC (“Wyld”) is a Greater Portland-based, award-winning cannabidiol (“CBD”) company that produces and distributes consumable products—including gummies and drinks—that contain CBD. Over the last three years, through an unyielding commitment to quality, careful honing of recipes using real fruit and THC-free hemp extract, consistent use of its now-well-recognized packaging, and investment of millions of dollars, Wyld has built a consumer reputation for excellence and established significant goodwill across the country. Wyld owns federal copyright registrations and common law trade dress rights covering the packaging for its CBD products.

3. In 2019, Wyld terminated business discussions with Canopy Rivers Inc. (“Canopy Rivers”), an affiliate of defendant Canopy Growth USA, LLC (“Canopy Growth”), regarding Wyld’s CBD products. One year later, Canopy Growth and Martha Stewart Living Omnimedia (“MSLO,” and collectively with Canopy Growth the “Defendants”) launched their own competing CBD product line featuring packaging nearly identical to Wyld’s:



2- COMPLAINT

4. Defendants have caused marketplace confusion, will continue to cause marketplace confusion, and threaten Wyld's hard-earned intellectual property rights. With this case, Wyld seeks to protect consumers from Defendants' intentionally tortious activities and redress harm to Wyld.

PARTIES, JURISDICTION, AND VENUE

5. Northwest Natural Goods, LLC, is an Oregon limited liability company with a principal place of business at 11791 SE Highway 212, Ste. 406, Clackamas, OR, 97015.

6. Upon information and belief, Canopy Growth USA, LLC, is a Delaware corporation with a principal place of business at 35715 Highway 40, Evergreen, Colorado, 80439.

7. Upon information and belief, Martha Stewart Living Omnimedia, Inc., is a Delaware corporation with a principal place of business at 601 W. 26th Street, New York, NY, 10001.

8. This is an action in which Wyld seeks monetary and injunctive relief for the various acts of Defendants arising under the Copyright Act, 17 U.S.C. § 501 *et seq.*, Lanham Act, 15 U.S.C. §§ 1051 *et seq.*, and common law. Defendants' unlawful acts have irreparably harmed the goodwill and reputation of Wyld and have caused Wyld significant damage.

9. This Court has jurisdiction over the subject matter of this action pursuant to 15 U.S.C. § 1121, 28 U.S.C. § 1331, and 28 U.S.C. § 1338(a), as this action involves questions regarding the Defendants' violations of federal law, and has supplemental jurisdiction over the state law claims under 28 U.S.C. §§ 1338(b) and 1367.

10. This Court has personal jurisdiction over Defendants, because Defendants sold and distributed and are selling and distributing products that infringe Wyld's copyrighted works and trade dress within the State of Oregon, and have otherwise made or established contacts within this State sufficient to permit the exercise of personal jurisdiction including by committing acts of copyright and trademark infringement in this State.

11. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b) and (c), because a substantial part of the events or omissions giving rise to this action occurred in this District and because Defendants have committed acts of infringement in this District.

WYLD, ITS BUSINESS, AND ITS RIGHTS

12. Founded in 2016 in Oregon by three college friends, Wyld produces and distributes a variety of edible cannabis products made with real fruit.

13. In 2019, Wyld launched a line of gummy and drink products infused with CBD, a non-psychoactive compound found in cannabis and hemp.

14. Wyld currently offers Raspberry, Blackberry, Pear, Huckleberry, Elderberry, and Lemon CBD-infused gummies and Raspberry, Blackberry, Blood Orange, and Lemon CBD-infused drinks (the “CBD Line”). Wyld manufactures the CBD Line in Oregon and distributes the CBD Line to all 50 states. The products in Wyld’s CBD Line do not contain any THC.

15. Wyld’s CBD Line has enjoyed great commercial success. The CBD Line has generated tens of millions in sales nationwide since 2020 increasing through the present. According to data provided by the data analysis company SPINS, LLC, Wyld is the leading CBD-infused gummy brand in the United States, with a measurably-increasing market share. A significant share of sales of Wyld’s CBD Line are in Oregon.

16. Wyld’s unique and striking packaging for its CBD Line sets Wyld apart in a crowded and competitive marketplace. Wyld’s clean white packaging, featuring stylized botanical fruit and foliage illustrations, and a circular logo with a thin border (the “Trade Dress”) vividly communicates that Wyld products are high quality and fit easily into consumers’ day-to-day adventures. Examples of the Wyld Trade Dress follow:



17. The Trade Dress is inherently distinctive and markedly dissimilar to the packaging of other CBD-infused gummies.

18. The Trade Dress has also acquired secondary meaning such that the public has come to associate the Trade Dress exclusively with a single source, namely, Wyld. As a result of Wyld's efforts, and the tens of millions of dollars of sales of products bearing the Trade Dress, consumers nationwide have come to understand the Trade Dress as signifying a unique source for the Wyld brand.

19. Wyld's promotion and marketing efforts have resulted in favorable public acceptance and recognition of the Trade Dress. In addition to its CBD-focused website available at www.wyldcbd.com, Wyld manages several popular social media accounts on Instagram, Facebook, Twitter, and LinkedIn.

20. Wyld has extensively advertised its CBD Line in the United States, including in Oregon, through various channels, including print, the internet, social media sites, in-person events, and its website.

21. Wyld and its successful CBD Line have attracted media attention, including in mainstream media such as *Forbes*. Wyld and its CBD Line have also won numerous awards, including recognition for packaging excellence.

22. Likewise, due to Wyld's efforts and sales in Oregon, consumers in Oregon have come to understand the Trade Dress as signifying a unique source for the Wyld brand.

23. Wyld has filed copyright applications, and owns the associated copyrights, for its Blackberry, Lemon, and Raspberry CBD packaging; a shelf endcap design; and a folder cover (collectively, the “Copyrighted Works”):

a. Wyld owns a copyright for visual material associated with its Wyld CBD Blackberry Gummies Product Packaging Label, which was first published on January 1, 2020, and which matured to registration, with an effective date of registration of November 30, 2020. Wyld owns that copyright and has not assigned, licensed, or otherwise transferred its rights. That copyright, Registration No. VA 2-235-703, is attached hereto as Exhibit 1. The copyrighted work is shown below.



b. Wyld owns a copyright for visual material associated with its Wyld CBD Lemon Gummies Product Packaging Label, which was first published on January 1, 2020, and which matured to registration, with an effective date of registration of November 30, 2020. Wyld owns that copyright and has not assigned, licensed, or otherwise transferred its rights. That copyright, Registration No. VA 2-225-605, is attached hereto as Exhibit 2. The copyrighted work is shown below.



c. Wyld owns a copyright for visual material associated with its Wyld CBD Raspberry Gummies Product Packaging, which was first published on January 1, 2020, and which matured to registration, with an effective date of registration of November 30, 2020. Wyld owns that copyright and has not assigned, licensed, or otherwise transferred its rights. That copyright, Registration No. VA 2-225-606, is attached hereto as Exhibit 3. The copyrighted work is shown below.



d. Wyld owns a copyright for visual material associated with its Wyld CBD Shelf Endcap, which was first published on December 1, 2019, and which matured to registration, with an effective date of registration of November 30, 2020. Wyld owns that copyright and has not assigned, licensed, or otherwise transferred its rights. That copyright, Registration No. VA 2-225-607, is attached hereto as Exhibit 4. The copyrighted work is shown below.



e. Wyld owns a copyright for visual material associated with its Wyld Folder Cover, which was first published on January 15, 2020, and which matured to registration, with an effective date of registration of November 30, 2020. Wyld owns that copyright and has not assigned, licensed, or otherwise transferred its rights. That copyright, Registration No. VA 2-235-133, is attached hereto as Exhibit 5. The copyrighted work is shown below.



24. Wyld also owns copyright registrations covering other gummy flavors in its CBD Line: Huckleberry (Reg. No. VA 2-235-124), Elderberry (Reg. No. VA 2-300-465) and Pear (Reg. No. VA 2-295-914).

25. When consumers see Wyld's Trade Dress or Copyrighted Works on products in the CBD Line, they expect the real-fruit flavors of Wyld gummies and drinks. Wyld has protected its brand fiercely, including by, as outlined above, obtaining copyright protections for the packaging for its CBD Line and state law trademark registrations. This brand strength is among Wyld's most valuable assets, and any diminution of that strength, whether by loss of control over the brand in the marketplace or by tarnishment from perceived quality erosion or otherwise, would immediately and irreparably damage Wyld.

DEFENDANTS' INFRINGING ACTIVITIES

26. Starting in July 2019, Wyld and Canopy Rivers began discussing potential business transactions related to Wyld's CBD Line.

27. As part of those discussions, Wyld sent Canopy Rivers a business plan for Wyld's CBD Line, which included examples of Wyld's Trade Dress and Copyrighted Works associated with Wyld's Blackberry, Lemon, and Raspberry CBD-infused gummies.

28. Those business discussions terminated in or about November 2019.

29. Less than a year later, on or after September 10, 2020, Canopy Growth launched its Martha Stewart-branded CBD products, including gummies, oils, and softgels. Since then, Canopy Growth has expanded its Martha Stewart-branded CBD products to include new flavors and new products including topical creams and pet products. According to Martha Stewart's website, www.marthastewart.com, "Martha's CBD products were all designed by the lifestyle mogul herself."

30. The Martha Stewart-branded CBD-infused gummies (the "Martha Stewart CBD Gummies") and CBD oil drops (the "Martha Stewart CBD Drops") use packaging that mimics the Trade Dress. The Martha Stewart CBD Gummies and CBD Drops are collectively referred to as the "Martha Stewart CBD Products" in this complaint. The Martha Stewart CBD Products use clean white packaging, featuring stylized botanical fruit and foliage illustrations, and a circular logo with a thin border (the "Infringing Packaging"). Examples of the Infringing Packaging are shown below:



31. The Martha Stewart CBD Gummies include several flavors such as Berry Medley, Citrus Medley, Tropical Medley, Harvest Medley, and Pumpkin Spice, as well as a "15 flavor

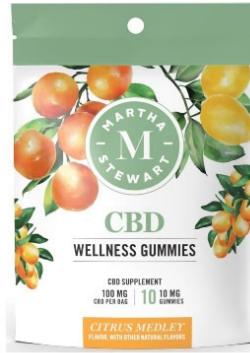
“sampler” pack. The Martha Stewart CBD Gummies are packaged in designs that feature stylized botanical fruit and foliage illustrations on a clean white background, with a circular logo with a thin border. Examples of the Infringing Packaging for the Martha Stewart CBD Gummies are shown below.



32. Martha Stewart CBD Drops include Blood Orange and Meyer Lemon flavors, featuring nearly identical packaging to that of the Martha Stewart CBD Gummies. Examples of the Infringing Packaging for the Martha Stewart CBD Drops are shown below.



33. In addition to using packaging that is confusingly similar to Wyld's Trade Dress, Defendants marketed and promoted the Martha Stewart CBD Products using infringing materials, including an endcap that is highly similar to Wyld's copyrighted endcap. Side-by-side comparisons of Wyld's CBD Line, Trade Dress and Copyrighted Works, on the one hand, and the Infringing Packaging, on the other hand, are shown below.

Wyld's CBD Line	Martha Stewart CBD Products
	
	
	

Wyld's CBD Line	Martha Stewart CBD Products
	
	

34. Defendants market and sell the Martha Stewart CBD Products, featuring the Infringing Packaging, in more than 30 states including Oregon. The Infringing Packaging states “Manufactured for Canopy Growth USA, LLC / 35715 US Hwy 40, Ste D102, Evergreen, CO 80439, 1-833-U-AND-CBD” and “www.MarthaStewartCBD.com.” The domain name www.MarthaStewartCBD.com is registered to and owned by MSLO.

35. The Martha Stewart CBD Products consisting of CBD-infused gummies and CBD oil drops are identical and/or highly competitive with Wyld’s CBD Line and are sold at a similar price point.

36. To the extent the parties’ product lines do not currently overlap, there is a strong likelihood that the parties will expand their product offerings and the products will overlap.

37. The parties’ product lines are currently sold in many of the same retail outlets., including without limitation, liquor stores, grocery stores, wellness stores, vitamin and supplement stores, and Internet websites.

38. The marketing channels used to promote the Martha Stewart CBD Products are identical and/or overlapping with the marketing channels used to promote Wyld’s CBD Line.

39. Prior to distributing the Martha Stewart CBD Products, Defendants knew of Wyld’s Trade Dress and, on information and belief, intentionally copied that Trade Dress to trade off of Wyld’s goodwill and reputation.

40. As a result of Defendants’ use of the Infringing Packaging, actual confusion has resulted and will likely continue. Consumers have recognized the stark similarities between the Infringing Packaging and Wyld’s Trade Dress. For example, a consumer on Martha Stewart’s website commented: “Nice packaging looks just like Wyld” Likewise, a user on Defendants’ Instagram page commented: “Why is the packaging ripping off small biz @wyld_canna ? Hope @marthastewartcbd can do something more on brand. What Wyld did was totally unique.”

41. Defendants’ infringement of Wyld’s Trade Dress has also cost Wyld business opportunities. For instance, in February 2022, the Vitamin Shoppe declined to pick up Wyld’s

CBD Line for distribution at Vitamin Shoppe storefronts because Vitamin Shoppe noted that the Wyld CBD Line “looks very similar to Martha Stewart[’s CBD gummies]” and so would “create cannibalization within [the Vitamin Shoppe’s] assortment” of products. Vitamin Shoppe continues to sell the Martha Stewart CBD Products and does not sell the Wyld CBD Line.

42. In other cases, distributors place the displays for the Wyld CBD Line and the Martha Stewart CBD Gummies adjacent to each other, and consumers are highly likely to be confused as to whether one party is the source of or associated with the other party, when it is not. An example of how the two lines of products are or have been displayed at Archway Market in Newport, Oregon, is shown below.



43. On information and belief, the continued offering for sale, and sale, of products in the Infringing Packaging by Defendants has led and will continue to lead to confusion as to the source between Defendants’ products and the Wyld CBD Line.

**FIRST CLAIM FOR RELIEF
(Copyright Infringement)
Against All Defendants**

44. Wyld realleges and incorporates by reference, as if fully set forth herein, the allegations in paragraphs 1-43 above.

45. The Wyld CBD Line contains original works of authorship which are copyrightable under the laws of the United States, and which have been published in conformity

with the Copyright Act and all laws governing copyrights. Specifically, Wyld owns copyrights associated with Blackberry, Lemon, and Raspberry illustrations featured on the Wyld CBD Line, as well as the Shelf Endcap and Folder Cover. Exs. 1-5.

46. Wyld has never assigned, licensed, or otherwise transferred its copyrights in the Copyrighted Works to any of the Defendants or dedicated them to the public.

47. By its actions above, Defendants have infringed Wyld's Copyrighted Works by making copies, or derivative works of, the works and displaying and distributing those copies without the permission of Wyld.

48. Defendants' acts of infringement alleged herein have been willful, in disregard for, and with indifference to, Wyld's rights.

49. Wyld is entitled to an injunction restraining Defendants, its agents, employees, and all persons acting in concert or participation with them, from engaging in any further such acts in violation of the Copyright Act.

50. As a direct and proximate result of Defendants' acts of infringement alleged above, Wyld has been injured and is entitled to actual damages suffered by Wyld and profits derived by Defendants as a result of their acts of infringement pursuant to 17 U.S.C. § 504(b).

51. Alternatively, as a direct and proximate result of Defendants' acts of infringement alleged above, Wyld has been injured and is entitled to the maximum statutory damages from Defendants pursuant to 17 U.S.C. § 504(c).

52. Wyld is further entitled to its costs in pursuing this action, including reasonable attorneys' fees, pursuant to 17 U.S.C. § 505.

**SECOND CLAIM FOR RELIEF
(Violation of Section 43 of the Lanham Act)
Against All Defendants**

53. Wyld realleges and incorporates by reference, as if fully set forth herein, the allegations in paragraphs 1-52 above.

54. Wyld uses and owns the Trade Dress in connection with the Wyld CBD Line. Wyld's Trade Dress is non-functional, inherently distinctive, and has acquired secondary meaning as a designation of origin for Wyld.

55. Defendants' actions as described herein constitute trade dress infringement under the Lanham Act. Specifically, Defendants' distribution, advertisement, offering for sale, and sale of the Martha Stewart CBD Products featuring the Infringing Packaging and using infringing works has caused and is likely to continue to cause confusion, to cause mistake, or to deceive in violation of Section 43 of the Lanham Act (15 U.S.C. § 1125).

56. Defendants' distribution, advertisement, offering for sale, and sale of the Martha Stewart CBD Products featuring the Infringing Packaging commenced well after Wyld's use and extensive national sales of the Wyld CBD Line. In connection with its promotion and sale of the Martha Stewart CBD Products, Defendants use a trade dress that is confusingly similar to Wyld's Trade Dress. Defendants' Infringing Packaging is likely to cause and/or has caused confusion and mistake and deceives consumers and others as to the origin, sponsorship, or affiliation of the parties' products. Consumers seeing the Martha Stewart CBD Products in the marketplace featuring the Infringing Packaging are likely to believe that the products are the same as the Wyld CBD Line or are sponsored by, associated with, or otherwise affiliated with Wyld, when they are not.

57. Defendants' confusingly similar imitation of the Trade Dress is a knowing, willful, and intentional violation of Wyld's rights.

58. Defendants' acts of trade dress infringement and false designation of origin, unless restrained or curtailed, will cause great and irreparable harm to Wyld and to the business goodwill represented by the Trade Dress, in an amount that cannot be ascertained at this time, leaving Wyld with no adequate remedy at law.

59. By reason of the foregoing, Wyld is entitled to injunctive relief against Defendants, restraining them from any further acts of trade dress infringement under the Lanham Act or false designation of origin.

60. Wyld is therefore entitled to injunctive relief, and actual and compensatory damages in an amount to be determined at trial, attorneys' fees, costs and disbursements.

THIRD CLAIM FOR RELIEF
(State Common Law Trade Dress Infringement and Unfair Competition)
Against All Defendants

61. Wyld realleges and incorporates by reference, as if fully set forth herein, the allegations in paragraphs 1-60 above.

62. Wyld uses and owns the Trade Dress in connection with the Wyld CBD Line. That Trade Dress is non-functional, inherently distinctive, and has acquired secondary meaning as a designation of origin for Wyld in Oregon.

63. Defendants' distribution, advertisement, offering for sale, and sale of the Martha Stewart CBD Products featuring the Infringing Packaging commenced well after Wyld's use and extensive sales of the Wyld CBD Line. In connection with its promotion and sale of the Martha Stewart CBD Products, Defendants use a trade dress that is confusingly similar to Wyld's Trade Dress. Defendants' Infringing Packaging is likely to cause confusion and mistake and to deceive Oregon consumers and others as to the origin, sponsorship, or affiliation of the parties' products. Consumers in Oregon seeing the Martha Stewart CBD Products with the Infringing Packaging in the Oregon marketplace are likely to believe that Defendants' products are the same as the Wyld CBD Line or are sponsored by, associated with, or otherwise affiliated with Wyld, when they are not.

64. Defendants' confusingly similar imitation of Wyld's Trade Dress is a knowing, willful, and intentional violation of Wyld's rights.

65. Defendants' conduct constitutes trade dress infringement and unfair competition under the common law of the State of Oregon.

66. Defendants' acts of trade dress infringement and unfair competition, unless restrained or curtailed, will cause great and irreparable harm to Wyld in Oregon and to the business goodwill represented by the Trade Dress, in an amount that cannot be ascertained at this time, leaving Wyld with no adequate remedy at law.

67. By reason of the foregoing, Wyld is entitled to injunctive relief against Defendants, restraining them from any further acts of trade dress infringement or false designation of origin.

68. Wyld is also entitled to actual and compensatory damages in an amount to be determined at trial, attorneys' fees, costs and disbursements.

PRAYER FOR RELIEF

WHEREFORE, Wyld prays for relief as follows:

1. For Judgment in favor of Wyld, and against Defendants, for damages in such amounts as may be proven at trial;
2. An award for Wyld's damages and for disgorgement of Defendants' profits as allowed under 17 U.S.C. § 504(b), or at Wyld's election, statutory damages in an amount up to \$150,000 for each of Wyld's Copyrighted Works infringed;
3. An award of enhanced damages or profits, whichever is greater, under Section 35 of the Lanham Act, 15 U.S.C. § 1117, and as otherwise provided by law;
4. An accounting and disgorgement of all Defendants' profits and gains from their unlawful acts;
5. An award of costs and reasonable attorneys' fees;
6. Post-judgment interest;
7. An order that Defendants and all of their agents, officers, employees, representatives, successors, assigns, affiliates, attorneys, and all other persons acting for, with, by, through, or under authority from Defendants, or in concert or participation with Defendants, and each of them be permanently enjoined from:
 - a. Using the Infringing Packaging or any other copy, reproduction, colorable imitation, or simulation of the Wyld Trade Dress, or any other confusingly similar packaging, in association with their goods or services;
 - b. Using any trade dress, trademark, service mark, packaging, name, logo, design or source designation of any kind or in connection with their goods

or services that is a copy, reproduction, colorable imitation, or simulation of the trade dress, trademarks, service marks, names or logos of Wyld;

- c. Using any trade dress, trademark, service mark, packaging, name, domain name, logo, design, or source designation of any kind on or in connection with Defendants' goods or services which is likely to cause confusion, mistake, deception, or public misunderstanding that such goods or services are produced or provided in association or in any way connected to Wyld; and
- d. Copying, distributing, selling, displaying, or otherwise using any unauthorized copy of Wyld's Copyrighted Works or any derivative thereof;

8. Wyld be awarded such other and further relief as the Court may deem just.

DATED: September 7, 2022.

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